

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

L. T. TUCKER, JR.,

Plaintiff,

v.

Case No. 2:06-cv-58
HON. ROBERT HOLMES BELL

SANDRA MONROE, et al.,

Defendants.

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OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION AS MODIFIED

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge on January 29, 2007, which recommended that Defendant Monroe's motion for summary judgment be granted in part and denied in part, and that Plaintiff's motion for summary judgment be denied. The Report and Recommendation was duly served on the parties. The Court received objections from the Plaintiff. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made.

Plaintiff claims that the Magistrate Judge erred in finding that his retaliatory misconduct ticket claim is barred by the doctrine of *Heck v. Humphrey*, 512 U.S. 477 (1994). Plaintiff states that his misconduct conviction did not result in a loss of good time and that it did not affect the length of his sentence. Therefore, pursuant to *Wilkinson v. Dotson*, 125 S. Ct. 1242, 1248 (2005) and *Muhammad v. Close*, 540 U.S. 749 (2004), his claim is not barred by the doctrine set forth in *Heck*. Plaintiff asserts that he is serving a parolable life sentence for second degree murder

and is not eligible to earn good time or disciplinary credits. In light of this contention, the court concludes that Plaintiff is correct. Therefore, his retaliatory misconduct ticket claim may not be dismissed at this time.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved as modified by this opinion. Because there is a genuine issue of material fact with regard to the claims being asserted, Defendant's motion for summary judgment and Plaintiff's motion for summary judgment (docket #24 and #35) are DENIED.

Dated: March 15, 2007

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE